

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Kenneth M. Powers,

Cr. No. 1:15-3510-CMC-SVH

Plaintiff

v.

Warden B.J. Meeks,

Opinion and Order

Defendant.

This matter is before the court on Petitioner's *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2241. ECF No. 1. In his § 2241 motion, Petitioner seeks relief pursuant to the recent Supreme Court decision in *Johnson v United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), arguing that he is actually innocent of being an armed career criminal and therefore that his sentence should be vacated. *Id.* Petitioner argues that no remedy is available to him under 28 U.S.C. § 2255, as the Fourth Circuit has twice denied him permission to file a second or successive § 2255 motion. *Id.*

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On November 24, 2015, the Magistrate Judge issued a Report recommending that this matter be dismissed, as § 2241 is an improper method for seeking the relief requested under *Johnson*. ECF No. 11. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so.

On December 10, 2015, Petitioner filed a motion for extension of time to file a response to the Report, asking for a sixty day extension because he was being moved to another institution within the Bureau of Prisons. ECF No. 14. In response to Petitioner's motion, the court entered a Docket Text Order granting the motion and staying the matter until the decision of the Fourth Circuit in *United States v. Surratt*, 797 F.3d 240 (rehearing en banc granted Dec. 2, 2015). ECF No. 15. Despite the stay, Petitioner filed objections to the Report on December 29, 2015. ECF No. 18.

While the *Surratt* en banc opinion has not yet issued, Petitioner, through counsel, filed a petition under 28 U.S.C. § 2244 in the Fourth Circuit Court of Appeals on April 25, 2016. *In re: Kenneth Myrick Powers*, No. 16-455. On May 16, 2016, the Fourth Circuit granted Petitioner's motion, giving him permission to file a second or successive motion under 28 U.S.C. § 2255 in the District Court of South Carolina. *Id.*, ECF No. 9-1. Petitioner, through counsel, filed his § 2255 motion in this court on May 23, 2016. See No. 3:07-cr-00776-CMC, ECF No. 117.

As Petitioner has been granted permission to file his second or successive motion under § 2255 in this court, and has in fact done so based on the same grounds argued in his § 2241, Petitioner is now pursuing his claim regarding his armed career criminal status through the appropriate channel. Therefore, his § 2241 motion is moot and is hereby dismissed.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
June 14, 2016